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VIA SAME-DAY HAND DELIVERY

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, NW
Room 222
Washington, D.C. 20554

Re: Comments of The Game Show Network, L.P., in MM Docket No. 92-266, CS Docket No. 96-60

Dear Mr. Caton:

On behalf of The Game Show Network, L.P. ("GSN"), and in accord with 47 C.F.R. § 1.419, enclosed for filing with the Commission are an original and eleven copies, which include copies for each Commissioner, of the Comments of GSN in response to the Commission's Order on Reconsideration of the First Report and Order and Further Notice of Proposed Rulemaking in the above referenced dockets.

An additional copy of the Comments is enclosed to be date-stamped. Please return the date-stamped copy to the courier for delivery to the undersigned.

Any questions regarding this filing should be referred to the undersigned. We very much appreciate your assistance in processing this filing.

Respectfully submitted,

John E. Welch

Jeffrey J. Carlisle

Counsel to The Game Show Network, L.P.

Enclosures

cc: Lynn Crakes, Attorney,
Policy and Rules Division, Cable Services Bureau
Ed Gallick, Senior Economist,
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Julia Buchanan, Attorney,
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

In the Matter of	)	
	)	
Implementation of Sections of	)	MM Docket No. 92-266
the Cable Television Consumer	)	
Protection and Competition	)	
Act of 1992: Rate Regulation	)	
	)	
Leased Commercial Access	)	CS Docket No. 96-60

COMMENTS OF THE GAME SHOW NETWORK, L.P.

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Counsel for The Game Show Network, L.P.

Dated: May 15, 1996

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To: The Commission

SUMMARY OF COMMENTS OF THE GAME SHOW NETWORK, L.P.

The Game Show Network, L.P. ("GSN") is a cable programmer which, like most other cable programmers unaffiliated with cable operators or broadcasters, has found that the Commission's current leased access rules do not allow it access to cable systems at affordable rates under acceptable conditions. In the following comments, GSN applauds the Commission's proposed revisions to its leased access rules and offers a number of proposals aimed at clarifying and refining such proposed revisions in the interest of creating a leased access environment conducive to the launch and lasting success of independent cable programming.

With regard to the Commission's proposed revision of the maximum rate formula, GSN proposes the following:

- cable operators must designate for leased access status only those services that rank among the lowest third in terms of per channel opportunity costs;
- cable operators must not include presumed lost subscriber revenue in their tier-related opportunity cost calculations as such a cost may be illusory and, in any event, may not be quantifiable;
- although programmer categories should not be used in calculating the maximum rate, cable operators should not fill more than 50 percent of their designated channels with any one category of leased access programmer; and
- in calculating the maximum rate, cable operators should only use opportunity costs that have been specifically allowed by the Commission's rules.

Additionally, GSN believes strongly that there is no need for the transition period contemplated by the Further Notice of Proposed Rulemaking. A transition period has not been required by the Commission under similar circumstances and contravenes the statutory scheme of leased access.

With regard to channel and tier placement, GSN proposes that the Commission:

- require that cable operators allow leased access programmers to choose from among those channels designated for leased access; and
- require cable operators to place leased access tier programming only on the basic service tier or the cable programming service tier with the highest subscriber penetration.

With regard to programmer selection, the Commission should clarify the first-come, first-served system to avoid disputes over priority. Further, the Commission should also provide that cable operators accept requests for leased access channels over a week-long period, and allow auctions in the event demand exceeds capacity.

Finally, GSN requests that the Commission:

- decline to establish preferential rates or set-aside requirements for not-for-profit leased access programmers; and
- provide that an accountant's report in the dispute resolution procedure is final and binding on the parties, provide that the loser pays in certain circumstances and modify the method for choosing accountants.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

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To: The Commission

COMMENTS OF THE GAME SHOW NETWORK, L.P.

The Game Show Network, L.P. ("GSN"), by its counsel, submits these comments in response to the Commission's Further Notice of Proposed Rulemaking[1] (the "FNPRM") in the above-captioned proceeding.

The statutory aim of leased access is to "assure that the widest possible diversity of information sources are made available to the public from cable systems in a manner consistent with the growth and development of cable systems."[2] GSN is an advertiser-supported cable programmer unaffiliated with any cable operator or broadcaster. GSN, like many other unaffiliated cable programmers, believes that the

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[1] Order on Reconsideration of the First Report and Order and Further Notice of Proposed Rulemaking, MM Docket No. 92-266, CS Docket No. 96-60 (March 29, 1996).

[2] Communications Act of 1934, as amended (the "Communications Act"), § 612(a), 47 U.S.C. § 532(a) (Supp. V 1993).

Commission's current leased access rules do not maximize the diversity of information available from cable systems that might otherwise be possible. Thus, GSN applauds the Commission's proposed approach for the calculation of maximum leased access rates and its tentative conclusions regarding tier and channel placement and certain other issues. GSN believes that, subject to certain refinements, the Commission's proposals in the FNPRM will "better promote the goals of leased access."[3]

GSN hereby requests that the Commission's proposals be clarified and refined in certain respects. Specifically, GSN urges the Commission to modify its proposed rules in order to (i) require that cable operators designate channels carrying the lowest opportunity cost programming as leased access channels, (ii) make the benefits of the revised rate formula available immediately and (iii) provide programmers with a genuine outlet by requiring operators to place leased access on the basic service tier ("BST") or cable programming service tier ("CPST") with the largest number of subscribers. GSN also suggests that the Commission further modify and refine certain of its proposals concerning the categorization of leased access programmers, programmer selection and not-for-profit programmers.

GSN believes that the modifications suggested below are important, if not vital, to guarantee that leased access satisfies Congressional intent by meeting the goal of promoting programming diversity, and hopes the Commission finds its proposals to be

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[3] FNPRM at ¶ 61.

helpful and balanced refinements and clarifications of the Commission's tentative conclusions in the FNPRM.

I. BACKGROUND

A. GSN

GSN, a Sony Pictures Entertainment company, owns and operates the advertiser-supported Game Show Network (also referred to herein as "GSN"), a cable programming service offering a wide variety of popular game shows. GSN's family-oriented programming spans five decades of television history, from classic shows such as "What's My Line," "To Tell the Truth" and "Beat the Clock" to more recent shows such as "Jeopardy." Launched in December, 1994, viewer response to GSN's programming has been dramatic and overwhelmingly favorable. A national Nielsen survey in July, 1995, showed that, in those households with access to GSN, GSN tied "Discovery" and "MTV" in prime time with a Nielsen rating of .7.[4] Another test by a cable operator's viewer tracking system in February, 1996, showed that GSN was the second most watched cable network. Numbers alone, however, show only part of the picture. During a 30-day trial in August and September, 1995, in Chantilly, Virginia, viewer comments to a cable operator testing subscriber response to GSN were overwhelmingly positive,

[4] This rating was obtained by an A.C. Nielsen Telephone Coincidental Survey, June 19-23, 1995, 8 PM -11 PM, and is based on national satellite-delivered distribution.

showing that cable subscribers found GSN's mix of information, nostalgia and family entertainment to be a valuable addition to their cable operator's programming.[5]

B. Access to Subscribers

The positive response to GSN's programming indicates that it would be favorably received by a significant number of cable subscribers nationwide. Favorable reception by cable subscribers does not, however, equate with favorable reception by cable system operators constrained by limited channel capacity. Because GSN is not affiliated with any cable multiple system operator ("MSO") and does not have the leverage that comes from affiliation with major broadcasters seeking retransmission compensation, GSN has faced formidable obstacles in obtaining carriage by cable operators. Indeed, apart from a handful of cable networks that were launched in the distant past, the only cable networks that are widely carried and have, accordingly, achieved a wide subscriber reach have been those affiliated with cable operators or major broadcasters. As shown in Exhibit A, while the overwhelming majority of cable networks were independently owned at the end of 1984 when the leased access set-aside was first mandated by Congress, the reverse is now true. This trend toward vertical integration into programming by major MSOs has continued at the same pace even after

[5] Comments were collected by Media General in Chantilly, Virginia during a six-week period from August 14 to September 20, 1995. Out of a sampling of over 2,000 comments, over 95 percent were favorable.

the enactment of the 1992 Cable Act[6] when Congressional concern resulted in amendments to Section 612 of the Communications Act broadening the statutory purpose of leased access to include "the promotion of competition in the delivery of diverse sources of video programming." Moreover, because of the recognized flaws in the Commission's current "highest implicit fee formula" used to determine leased access rates,[7] it has not been economically feasible for GSN to pursue leased access as a means of obtaining cable system carriage. Accordingly, despite GSN's popularity with cable subscribers, it is carried by only a small number of cable systems. In other words, GSN's difficulty in obtaining carriage has been much the same as the experience of other independent cable programmers. For example, a cable network executive recently lamented that "[i]t's nearly impossible to launch [a] network not affiliated with big MSOs."[8]

Thus, while GSN and other unaffiliated programmers may, in theory, negotiate their way onto a cable operator's system, prevailing market conditions and the terms of doing so under the current leased access regime are such that it is virtually

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[6] Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, 106 Stat. 1460 (1992), 47 U.S.C. § 521 et seq. (Supp. V 1993).

[7] The Commission itself has recognized and identified these flaws in the FNPRM. See FNPRM at ¶¶ 28-31.

[8] "New Networks Divided on Prospects Created by Leased Access," Communications Daily 3 (April 11, 1996) ("New Networks") (noting observation by Auto Channel President Robert Gordon); see also Letter from Telemiami to the Commission, Ex Parte Presentation in MM Docket 92-266 (filed March 7, 1996) ("Telemiami Letter") (describing difficulties of unaffiliated cable programmer under leased access).

impossible to do so. Of course, GSN is confident that it will be able to sell its programming to cable operators outside of the leased access regime once GSN has achieved a critical mass of subscribers and carriage by cable operators in significant media markets across the nation. For GSN and many other unaffiliated cable programmers, leased access is one of the few remaining opportunities of doing so.

II. THE PROPOSED RATE RULES MUST BE CLARIFIED TO PREVENT ABUSE AND ENSURE DIVERSITY OF CABLE PROGRAMMING

A. Maximum Leased Access Rate Calculation

The Commission has taken a major step toward making leased access a viable tool for unaffiliated cable programmers to reach cable subscribers by proposing to overhaul the maximum leased access rate calculation. By basing the maximum rate for leased access on the "reasonable costs (or savings) that the operator incurs by leasing the channel to [a] leased access programmer,"[9] and precluding double billing of operating costs to both leased access programmers and subscribers, the Commission's new rules should satisfy the Congressional directive to establish "reasonable" rates[10] that will result in far more affordable leased access rates than are possible under the current regime. By making leased access affordable, the Commission will fulfill its statutory obligation to assure "that the widest possible diversity of information sources are available to the public from cable systems in a manner consistent with the growth and development of

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[9] FNPRM at ¶ 79.

[10] Communications Act, § 612(c)(4)(A)(i), 47 U.S.C. § 532(c)(4)(A)(i).

cable systems,"[11] while allowing the cable operator to establish prices, terms and conditions "at least sufficient to assure that such use will not adversely affect the operation, financial condition, or market development of the cable system."[12]

GSN understands the proposed rules to require that operators calculate the maximum rate for tier channels by first adding the operating costs for each designated channel per subscriber per month, represented by average subscriber revenue per designated channel per month, to the opportunity costs for each designated channel per subscriber per month. The operator then multiplies this total by the number of subscribers, resulting in a cost for each designated channel which is averaged with all of the other designated tier channel costs and designated premium channel costs. For tier channels, average subscriber revenue per channel is then subtracted from this average to determine the amount to be charged to the leased access programmer.[13]

GSN is concerned, however, that such averaging may not be sufficient, by itself, to ensure reasonable leased access rates. Cable operators, once they have calculated the per channel cost of placing leased access programming on each channel, are required to arrive at a maximum rate by averaging the per channel cost for all

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[11] Communications Act, § 612(a), 47 U.S.C. § 532(a).

[12] Communications Act, § 612(c)(1), 47 U.S.C. § 532(c).

[13] See FNPRM at ¶¶ 61-95, Appendices B-D.

designated channels.[14] As the Commission stated, such averaging would "mitigate against the operator's ability to manipulate the cost formula by designating one high cost channel and requiring a particular leased access programmer . . . to pay the opportunity costs for that particular programming."[15] Nevertheless, cable operators could still designate one or more very high cost channels as leased access channels and thus raise their average per channel costs beyond the point of economic utility. Using the Commission's example in Appendix D of the FNPRM, if only one of the tier channels was calculated to have an opportunity cost of $0.50 instead of $0.10, the cost per tier channel rises $800 to $4,450, an increase of almost 22 percent attributable to only one channel. Such a dramatic increase in leased access rates could pose a serious threat to leased access if, by doing so, cable operators were able to raise designated channel costs above the level at which cable programmers would use leased access.

Although the Commission asked "whether there should be a presumption against an operator designating only its highest valued channels in such a way as to inflate its maximum leased access rate,"[16] GSN urges the Commission to adopt the following bright-line rule with regard to channel designation: cable operators should be allowed to designate for leased access status only those channels that rank among the lowest third in terms of per channel opportunity costs.

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[14] See id. at ¶¶ 90-92.

[15] Id. at ¶ 91.

[16] Id. at ¶ 76.

By establishing such a rule, the Commission effectively would remove the possibility that averaging rates for designated channels will result in unreasonable leased access rates. Implementation of the rule is relatively simple: cable operators already will be required to calculate lowest per channel opportunity costs in order to calculate opportunity costs for dark channels.[17] Accordingly, operators will not incur extra administrative costs in complying with this rule. Moreover, this bright-line rule will spare cable operators, leased access programmers and the Commission itself the administrative and related burdens that would attend the inevitable disputes that would be spawned by a mere presumption that cable operators should not designate high cost channels for leased access.

In accord with the policies underlying the above proposal, GSN requests that, if premium channels are going to be included in averaging, the Commission require cable operators to subtract costs associated with premium channels from the opportunity costs for such channels. As such, and again referring to the Commission's example in Appendix D of the FNPRM, the opportunity cost of $2.50 for a premium channel would be reduced by the costs the cable operator incurs with regard to those channels such as scrambling, billing and marketing, thus resulting in a lower opportunity cost. Backing out these costs of current, non-leased access premium programming is entirely consistent with the Commission's statement that opportunity costs should reflect the "reasonable costs (or cost savings) that the operator incurs by leasing the channel to the leased access

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[17] See id. at ¶ 87.

programmer."[18] If cable operators no longer have to pay these costs, these savings should be reflected in the opportunity cost calculation. Moreover, as the Commission's proposed rule would allow cable operators to include in the opportunity cost calculation technical costs related to new leased access programming,[19] reciprocity would demand that technical costs saved should be excluded.

B. Lost Subscriber Revenue

The Commission tentatively concluded that it would not include in the opportunity cost calculation for tier programming the cost of any loss in subscribership as "any such subscriber loss is too speculative to measure accurately," but asked for comment as to whether the cost formula could include such loss.[20] GSN agrees with the Commission's tentative conclusion and strongly cautions against adopting any measure of subscriber loss (or gain) as part of the opportunity cost calculation. While it may be possible to measure changes in the number of subscribers over time, there is no reliable statistical method whereby a cable operator could ascribe lost or gained subscribers to a single event affecting tier programming. Accordingly, the Commission

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[18] Id. at ¶ 79.

[19] See id. at ¶ 84.

[20] Id. at ¶ 86.

should resist any suggestion that lost tier subscribers be included as an opportunity cost for the purpose of calculating the maximum rate.[21]

C. Programmer Categories

The Commission tentatively concluded that it would not establish programmer categories for the purpose of calculating the maximum rate.[22] GSN agrees that the maximum rate should not vary based on category, as the new cost calculations are not based on the economics of any particular leased access market. However, when operators use cost-based pricing, and particularly when operators use market-based pricing, the market economics of certain categories of leased access programming may allow them to pay much higher leased access rates, and thus lease more channels, than other categories of leased access programmers. As such, designated channels intended to be leased by a wide variety of unaffiliated programmers will, in effect, only be leased by a few types of programmers. This result would seriously undermine the statutory purpose of leased access: to enhance diversity of video programming. It also might

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[21] If the Commission were to permit cable operators to include lost subscriber revenue as an opportunity cost, then fairness dictates that additional tier subscriber revenue attributable to a new leased access channel should be subtracted from opportunity cost. GSN is confident that adding GSN to a cable operator's system would add more subscribers than would be lost by displacing current programming. GSN, however, does not believe that an accurate method exists for measuring either decreases or increases in subscriber revenue attributable to bumping and adding tier programming under the Commission's leased access regime.

[22] Id. at ¶ 74.

deleteriously impact the cable operator's long-term performance should leased access be taken over by only one type of leased access programming.

Accordingly, the Commission's new rules should provide that, based on the predominant revenue source of the programmer's channel, each leased access programmer belongs to one of the following categories: (i) pay-per-view, pay-per-event or other programming services where non-subscribers are excluded from viewing, (ii) home shopping channels, infomercials and other direct sales-type programming, (iii) advertising supported programming services and (iv) not-for-profit programming services.[23] Cable operators would be able to fill no more than 50 percent of their designated channels with any one type of programmer. For example, a cable operator with six channels available would be able to lease to three predominantly home shopping or infomercial channels; the other three channels could be all of one category, or a mix of the other three categories. Such a rule does not allow cable operators to exercise editorial control over content, as content is only considered abstractly for the statutorily prescribed purpose of enhancing diversity of cable programming. Moreover, it has the advantage of being relatively easy to administer by cable operators.

It may be argued that such a rule might actually interfere with cable operators maximizing their leased access revenue by preventing the highest paying programmers from taking over all of the leased access channels available. However,

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[23] The first two categories are recognized under the Commission's current leased access rules. Id. at ¶ 16.

there are cogent responses to such an argument. To the extent the Commission's cost-based formula is applicable, this allocation of leased access capacity will not change the calculation and application of that formula. Moreover, even if demand for leased access channels is such that rates are market-based, it is likely that there will be vigorous competition for the 50 percent of leased access channels that will be occupied by the non-predominant categories of programmers.[24] Additionally, a cable operator should have a better chance of sustaining its subscriber base in the long-term by avoiding the type of homogenous programming that would result from allocating all leased access channels to a single type of programmer. Finally, while Congress has required that leased access promote programming diversity "in a manner consistent with growth and development of cable systems,"[25] Congress has not mandated that leased access must allow cable operators to maximize their profits with respect to leased access channels. Accordingly, even if it could be established that GSN's proposed categorization rule would result in a slight unrecoverable opportunity cost to cable operators, such a result would be consistent with Congressional intent and, quite possibly, more beneficial to cable operators.

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[24] The Commission could also fashion this categorization rule so that it would apply only when demand for leased access channels by programmers representing non-predominant categories in fact equals or exceeds the remaining number of leased access channels. For example, if an operator has designated six leased access channels and four are requested by home shopping networks while only two are requested by all other types of programmers, then the cable operator could carry all four home shopping channels until such time as a non-home shopping programmer requested a channel.

[25] Communications Act, § 612(a), 47 U.S.C. § 532(a).

D. Permissible Opportunity Costs

GSN assumes that the Commission's discussion of the opportunity cost component of the cost formula[26] is intended to be an exhaustive list of the opportunity costs cable operators will be allowed to include in their cost calculations, and that any final order in this proceeding will expressly state that cable operators may include only those opportunity costs identified in the order. GSN believes that an exhaustive list of permitted opportunity costs is necessary to prevent cable operators from characterizing whatever costs they wish to recover as "opportunity costs." Doing so would undermine the Commission's intent that the cost calculation "not incorporate all opportunity costs" and that the calculation should only include such costs as are "reasonably quantifiable" or otherwise appropriate.[27] Moreover, setting forth an exhaustive list will foreclose many disputes that inevitably will arise over the characterization of costs as opportunity costs, thus establishing an easily enforceable rule and preserving valuable Commission resources.

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[26] FNPRM at ¶¶ 79 - 89.

[27] Id. at ¶ 79.

III. A TRANSITION PERIOD IS NOT WARRANTED BY COMMISSION PRECEDENT AND CONTRAVENES THE COMMISSION'S STATUTORY OBLIGATIONS

The Commission has requested comment on whether the proposed cost formula should be phased in over a transition period that may, according to the Commission's example at Appendix E of the FNPRM, last as long as three years.[28] GSN strongly opposes any transition period, and asks that the Commission reject any transition period out of hand.

First, a transition period was not required in the 1993 rulemaking under virtually the same circumstances as are present today. The rationale for a transition period appears to be that the new cost formula will increase the use of leased access, and thus increase the risk that non-leased access programming placed on designated channels will be bumped.[29] However, the Commission *did not* adopt a transition period when it established leased access rates in 1993, even though it stated that it was establishing its rate calculation "based on an expectation that, under these conditions, interest in the use of the leased access market will rise because rates will be low enough to entice programmers . . . to use leased commercial access."[30] Thus, even though the Commission expected that new rates would increase the use of leased access in 1993, it

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[28] See id. at ¶¶ 98-99, Appendix E.

[29] Id. at ¶ 99.

[30] Report and Order and Further Notice of Proposed Rulemaking, 8 FCC Rcd 5631, 5952 (1993) (the "1993 Order").

did not establish a transition period for the benefit of non-leased access programmers. No reason has been put forward why non-leased access programmers need such protection in 1996 when they did not need it in 1993, nor is any apparent.[31]

Second, a transition period would contravene the statutory scheme established by the Communications Act for leased access. Since 1984, leased access programmers have had a right, consistent with the provisions of the Communications Act, to be placed on a designated channel pursuant to a negotiated agreement with a cable operator.[32] By contrast, operators may only place non-leased access programming on a designated channel "until the use of such channel capacity is obtained . . . by a person unaffiliated with the operator."[33] Thus, operators placed non-leased access programmers on designated channels with full knowledge that such programmers held little more than "squatter's rights" and could be bumped immediately upon the conclusion of a leased access contract. Moreover, they have had at least three years'

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[31] Moreover, the Commission did not provide for a transition period when it adopted its must carry and retransmission consent rules, see Report and Order, 8 FCC Rcd 2969, 2972-2974 (1993), even though the implementation of those rules caused at least as much if not more disruption to cable programming as the present rulemaking proceeding is likely to cause. "Must carry" channels bumped a number of cable programming services, while further disruption was caused when many cable operators chose to satisfy their retransmission consent obligations by offering additional cable channels to broadcasters in lieu of cash consideration.

[32] See Communications Act § 612(c)(1), 47 U.S.C. § 532(c)(1).

[33] Communications Act § 612(b)(4), 47 U.S.C. § 532(b)(4).

notice that the Commission intended to adjust its rules.[34] As such, if a transition period is needed to prepare for use of leased access, this period has already passed to the extent all parties concerned have had three years' notice. The Commission should thus question very closely, and ultimately reject, any argument that operators and non-leased access programmers now need an additional three years (or even one year) to avoid undue hardship.

Third, a transition period cannot be reconciled with the Commission's "obligation to establish maximum reasonable rates for leased access."[35] Even though the proposed transition fees would only be based in part on the highest implicit fee formula, any amount over the cost formula would constitute a "transition premium" -- an extra amount over the maximum reasonable rate as determined by the cost formula. This transition premium would be paid solely to retard demand for leased access in order to accommodate non-leased access providers, and would thus seem to contradict the reason for modifying rates in the first place: to stimulate demand for leased access. At the very least, this runs counter to the Commission's statement that it wishes to act as "expeditiously as possible" given its concerns about the errors in the highest implicit fee formula.[36] Accordingly, any transition period is little more than an unjustified

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[34] See 1993 Order at 5956; see also Letter from ValueVision International, Inc. to the Commission, Ex Parte Presentation in MM Docket 92-266 (filed March 13, 1996) (discussing notice provisions and nature of non-leased access programmers' rights).

[35] FNPRM at ¶ 99.

[36] Id. at ¶ 64.

postponement of the implementation of a viable leased access regime. At any rate, the transition premium would clearly exceed the maximum reasonable rate, as set by the cost formula, which the Commission has determined is an "economically sound mechanism for determining the appropriate level of leased access demand."[37]

Finally, many new cable programming networks simply will not be able to survive during a transition period. Asking leased access programmers to wait through a lengthy transition period would make them endure a wait similar to the seemingly interminable wait for increased capacity: as one recent article has stated, the question is "how many startups can survive long enough to benefit from new channels."[38] Leased access programmers have fixed costs that must be covered during their launch phase. Many of them cannot absorb such costs while they wait for leased access rates to drop to reasonable and affordable levels so they can obtain significant cable carriage and generate sufficient revenue to stave off financial ruin.

For the above reasons, GSN strongly urges the Commission to reject any transition period and institute the new cost formula as of the effective date of the order on this proceeding.

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[37] Id. at ¶ 63.

[38] "New Networks" at 3.